

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JTN and EJW, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AMANDA NEVERASKI,

Respondent-Appellant,

and

SHAWN WOOD,

Respondent.

UNPUBLISHED

June 5, 2001

No. 231806

Branch Circuit Court

Family Division

LC No. 99-001433-NA

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Respondent-appellant Amanda Neveraski appeals as of right the family court's order terminating her parental rights to her two minor children, JTN and EJW, pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g); MSA 27.3178(598.19b)(3)(c)(i), (c)(ii), (g). Respectively, those statutory provisions permit a family court to terminate parental right when there is clear and convincing evidence that the conditions that led to adjudication had not been cured after 182 days, new conditions arose and had not been cured despite warning and an opportunity to rectify those conditions, and a failure to provide proper care and custody regardless of intent. Respondent Shawn Wood is EJW's father and JTN's father is unknown. The family court terminated Wood's parental rights pursuant to the same statutory provisions it applied to Neveraski, but terminated JTN's father's parental rights pursuant to MCL 712A.19b(3)(a); MSA 27.3178(598.19b)(3)(a) for abandonment. The fathers do not appeal. We affirm.

I. Basic Facts And Procedural History

The Family Independence Agency (FIA) first became involved with this family in 1998 after receiving a report of neglect.¹ The details of that neglect allegation are not clear from the record developed in this case. However, it appears that the family's primary problem was recurrent homelessness. Between August 1998 and December 1999, the FIA and the family evidently worked together voluntarily outside the family court system with the FIA providing more than \$3,500, total, for emergency housing on several occasions. There were two times when the FIA paid first and last months' rent to the family's landlords. During this time, the FIA also offered the family a variety of services intended to help them keep the children.

FIA caseworker Curt Singer visited Neveraski, her children, and Shawn Wood at the motel where they were staying in December 1999. The family had been homeless since August of that year and Singer, who had difficulty gaining entrance to the motel room because Wood was sleeping and hard to rouse, observed that the room was dirty. Dirty clothes and rubbish were on the floor and Singer did not see any food for the children to eat. Singer, who had visited the children on other occasions, observed that the children were generally unkempt, inappropriately dressed for the weather, and dirty, prompting him to file the original petition in this case.

In the original petition for temporary foster care, Singer recounted the family's history of homelessness, the current circumstances, and alleged that Neveraski and Wood had not cooperated with the services FIA had offered in the past. Singer also suggested that EJW suffered from medical abuse because he was born with a cleft lip and palette and, though Neveraski and Wood arranged for physicians to repair his cleft lip, they failed to bring EJW to the appointment to have his palette fixed, even though the FIA had secured financing for the operation. Singer also noted that both Wood and Neveraski had a history of unemployment and problems providing for their children's basic need for clothing, food, and shelter. Thus, the petition alleged that the children came within the family court's jurisdiction pursuant to MCL 712A. 2(b)(1); MSA 27.3178(598.2)(b)(1). The family court placed the children in foster care on a temporary basis after authorizing the petition.

Neveraski entered a plea of no contest or admission to the allegations in the petition later that December.² Following the first dispositional hearing on January 11, 2000, the family court ordered Neveraski to maintain employment, visit her children, and "demonstrate [her] ability to obtain and maintain appropriate housing that will be adequate both physically and emotionally

¹ The Court has had some trouble in securing transcripts of the early proceedings in this case and, therefore, relies on the pleadings, filings, and transcripts of later hearings to piece together the factual background to this case. Because Neveraski does not challenge any of the family court's orders or findings in these proceedings that occurred before the termination hearing, and never ordered the transcripts for them, the record is adequate to decide this appeal even without these missing transcripts.

² The family court's order taking jurisdiction over the children indicates that Neveraski "admitted to certain allegations" in the petition and Neveraski simply concedes that she "consented to the court taking jurisdiction over this matter," making it unclear which type of plea she entered.

for [herself] and [the] children.” Further, the family court ordered Neveraski to cooperate with the FIA and the services it offered.

Neveraski, however, had a difficult time complying with these requirements. For instance, the FIA petitioned the family court to hold a hearing at the end of May 2000, at which Neveraski had to show cause why she had not maintained employment or appeared for a psychological evaluation.³ According to the order entered following the show cause hearing, Neveraski admitted that she had not maintained employment or completed the evaluation.

Though the family court continued its dispositional order, including the employment, housing, and cooperation requirements, following the show cause hearing and the dispositional review hearings, Neveraski did not make any significant progress in most of these areas. For example, following the initial dispositional hearing, Neveraski and Wood found a suitable subsidized apartment at a cost of \$353 per month. However, they made only a partial rent payment in May 2000, and then ceased paying rent. In June 2000, Neveraski wrote a check for overdue rent in the amount of \$596 on a closed account. When the check was returned for nonsufficient funds, she was prosecuted and convicted, presumably for uttering and publishing. As of September 2000, she and Wood owed \$1,747 in overdue rent and the landlord was attempting to evict them. They were, in fact, evicted from the apartment in October 2000. They also owed approximately \$200 for the electricity, which had been shut off briefly.

At the termination hearing, Wood attempted to take all the responsibility for the problems he and Neveraski had encountered in the previous year, though he claimed that he and Neveraski had recently ended their relationship. He noted that he had not worked for most of that time, the few jobs he had found were short-lived, and Neveraski had been supporting him. Their costs simply exceeded what she could earn, leading to their problems with paying their bills. Wood, who said it was his “fault” that Neveraski wrote the bad check for their rent because he asked her to do so, blamed her legal problems on a misunderstanding with the landlord’s representative who, he claimed, had promised to hold the check rather than attempting to cash it immediately. He also acknowledged owing money for utilities, but insisted that he and Neveraski did not know that they were in arrears until the power company shut off their electricity because they had not received a bill. Wood admitted that he was currently homeless and unemployed, suffering from a sleeping illness that doctors were attempting to diagnose, and was not in a position to take care of EJW. However, he said, Neveraski loved the children, the children loved her, and they were bonded. He believed that she could take care of the children with some help, and that ultimately she would be able to take care of them by herself when she found her own housing, especially because he would not be “draining” the money she earned. Further, he knew her to be a hard-working, honest, and reliable employee who worked diligently to provide for her family.

When Neveraski testified, she candidly admitted that she had not completed the psychological evaluation because she had transportation problems and work conflicts. She detailed her problems with maintaining housing, including evictions from her last three

³ The aspect of the show cause hearing that concerned employment may have actually concerned only Wood. The record, as a whole, indicates that Neveraski generally had steady employment.

apartments, and the fact that she had been living with friends in the month preceding the termination hearing before moving into her stepmother's home. Though she had a relatively steady work history, she had written several bad checks in the past to cover necessities. Consequently, she had been strapped for money since the previous spring at which time her wages were garnished to cover some of the bad checks. Neveraski could not explain why her rent check had bounced because she thought she had enough money in the account. However, she conceded that she had pleaded guilty of the offense and was awaiting sentencing.

In the meantime, Neveraski was recovering from a back injury, had returned to work, and had created a financial plan to pay off her debts and provide for her children. She believed that she was able to care and provide for her children, including the baby due to be born in January 2001, with her stepmother's help and with help from friends who would drive her to work. She planned to get a driver's license, a car, and her own apartment as soon as possible. Neveraski noted that she made good money at her job, bringing home approximately \$312 a week, and had insurance and a retirement fund, all of which would benefit her children. She stated, as others had observed, that she had good parenting skills, she did not abuse her children, she disciplined them appropriately, and she knew how to feed them and take care of their daily needs.

When asked what would be different if the family court returned her children to her, Neveraski pointed out that she had taken care of JTN without any problems when she was only seventeen years old. Only when Wood moved in with her did she start to have financial difficulties. Neveraski thought that, because she and Wood had broken off their relationship, her financial situation would ease considerably. She believed that within three months she could show the family court that she had made progress in paying down these debts. She said that her children were more important to her than Wood, she was willing to accept any help the family court had to offer in order to improve as a parent, she loved her children, and her children loved her.

Pamela Tundevold, Neveraski's stepmother, and her husband, Ole Tundevold,⁴ confirmed that they were willing to allow Neveraski and her children to live in their home, though Wood was not welcome. When Neveraski moved in with them, Pamela Tundevold sat down with her and helped her develop a budget. She had observed Neveraski to be a good and caring mother who instilled morals in her children and required them to be polite.

FIA caseworker Kim McFellin said that medical neglect, evidently referring to EJW's cleft lip and palette, and chronic homelessness brought the children into foster care. In her opinion, though medical neglect was no longer an issue, the problem with homelessness had not been rectified and was unlikely to be rectified within a month; any longer would be an unreasonable amount of time for the children to remain in foster care. Though Neveraski attended almost all scheduled visits with her children and seemed to love them, McFellin still favored terminating Neveraski's parental rights because Neveraski would need to prove that she

⁴ Ole Tundevold is not Neveraski's father. Apparently, Pamela Tundevold was married to Neveraski's father when Neveraski was a small child and Neveraski considers her to be like a mother.

had made changes in her life and could care for the children for at least six months. McFellin thought that it would not be fair to continue to place the children's lives "on hold" in foster care any longer given that Neveraski had always known the areas in which she had to improve and she failed to take any action until immediately before the termination hearing. Furthermore, despite Wood's willingness to take full responsibility for the family's problems, McFellin concluded that Neveraski was also partly responsible because she had an income, a bank account, and checks in her name; according to McFellin, had Neveraski wanted to do so, she could have paid the bills and maintained housing, or worked toward that end, even without Wood's assistance.

The FIA also called two witnesses who had provided, or attempted to provide, services to Neveraski while her children were in foster care. Leora Bull, a parent aid, met with Neveraski to help her "find housing, jobs, transportation to and from appointments if necessary, hands-on housekeeping issues, budgeting, just a little bit of everything." She first started seeing Neveraski in February 2000 and, by the next month, Neveraski, along with Wood, had developed a set of goals that included finding appropriate, affordable housing, proper decision making, learning about the medical care EJW needed, and planning for their financial needs. Bull considered the apartment they found appropriate and within their price range, but said that she was not able to get Neveraski to complete a budget. In fact, she found Neveraski evasive about how much money she made and what her expenses were. Neveraski also told her that she did not believe the budget was necessary. Bull believed that Wood exerted some sort of control over Neveraski and once asked her directly whether he was abusing her, which Neveraski denied. Bull, who thought that Neveraski had not made working with her a priority, stopped seeing her and Wood after they missed appointments three times in a row. Neveraski, however, claimed that the appointments were scheduled at a time when she was at work or traveling home from work.

Jean Renee Kilgore, who worked in a parent education program through Michigan State Extension, also attempted to provide services to Wood and Neveraski through an FIA referral for a total of twenty-six times. Her focus was providing information on child behavior, discipline, playing with children, setting goals, and other parent-child issues. She perceived their home as chaotic during her first visit with the family before the children were placed in foster care. She received another referral for the family after the children were placed in foster care. Kilgore noted that the children, home for visits when she was there between 4:00 p.m. and 5:00 p.m., were often hungry, though she believed that they were being fed. On one occasions Neveraski indicated that she did not have enough food in the house, though Neveraski later claimed that she had enough food for the children's visit. Kilgore helped her get food from the FIA pantry, helped with transportation to appointments several times, and offered to arrange for Neveraski to receive prenatal care when she became pregnant again, which she declined. Kilgore did not have concerns about Neveraski's parenting skills, having seen Neveraski interact appropriately and lovingly with the children, but she did observe that the home was dirty on two or three of the four times she visited the apartment. She also saw Wood as more "assertive" and "domineering" than Neveraski, and had even talked with Neveraski about leaving Wood, but she stopped short of sharing Bull's opinion that he controlled Neveraski.

The family court announced its findings from the bench. The aspect of the case that concerned the family court the most was that Neveraski never seemed to make her children a priority. In the family court's opinion, Neveraski's problem was not merely poverty, but "a

matter of attitude” in refusing to take advantage of the services offered to her while her children were in foster care and in never taking “active steps to have the children returned to her.” The family court concluded that Neveraski moved in with the Tundevolds, not because she wanted to improve her situation and create a home for her children, but because she had no other options.

The family court made a special point of noting for the record that, in its opinion, separating from Wood was not the answer to Neveraski’s problems and, in fact, the family court did not believe that they had actually broken off their relationship. The family court acknowledged Neveraski’s statement that her children were more important to her than Wood, but stated:

My question is, since when? Haven’t been for the last year while these children have been living with other people, strangers to them. When children go through that – no matter how good foster parents are, they go through the trauma that comes with that circumstance. The emotional trauma that comes with being separated from a parent is not something we take lightly. It’s not something I take lightly.

And I simply do not believe mother when she says the children are more important than Mr. Wood. That – I go by what people do and not what they say. And by watching what mother has done, I have learned through the last year that is not so.

* * *

There was a continuous lack of cooperation between this couple and the agency while their children are [sic] placed in care. It’s an attitude that is the problem here. That attitude, that perception, that view, overcomes whatever affection this mother had for her children. Otherwise, she wouldn’t have, in her words, blown it off. She would have done anything. Any stupid thing that anybody asked her to do she would have done to get these children returned to her. She would have climbed mountains. She would have done anything. Instead she did nothing until a week before this hearing, a year later, when she comes into court and says, “I’ve moved in with my mom,” then had Ms. Tundevold testify, who has stepped forward and indicated that she would help in whatever way she could. Mr. Tundevold testified the same way. I agree with a lot of what they had to say.

There’s a budget here. That’s not hard. She did it the first day she moved in with her mother. Where was that a year ago? Where was that when Leora Bull came out? Why did we go through this? What this establishes is that the young lady has the ability to do this. She simply chose not to.

The family court continued to note Neveraski’s failure to take the basic steps toward reunification that it had ordered. Further, it observed that the Tundevolds essentially were taking over the role the FIA had played for the previous year in placing conditions on Neveraski’s living arrangements, how she paid her bills, and whether she saw Wood. The apparent implication was

that if Neveraski had failed at improving under the FIA's guidance, she would also fail under her stepmother's guidance.

The family court found clear and convincing evidence to terminate Neveraski's parental rights under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) because homelessness was one of the conditions leading to adjudication, more than 182 days had passed since the initial dispositional order in January 2000, and the problem was not likely to be rectified any time soon. As for termination of her parental rights pursuant to MCL 712A.19b(3)(c)(ii); MSA 27.3178(598.19b)(3)(c)(ii), the family court found that Wood's alleged separation from Neveraski was a changed circumstance, she had "received recommendations about doing that," but had not done so until a week before the termination hearing and her prospects for providing the children with a home was no better in his absence. Further, the family court found a failure to provide proper care and custody, supporting termination under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). As for the best interests factor, the family court commented:

And I can't, based upon my review of what's happened over the last year, find that it's clear and convincing that the order [terminating parental rights] would not be in the best interest of these children. If I don't sign that then I – what? – for another three months or six months or return the children to the mother, who hasn't done anything for the last year to prioritize these children, a mother who's worked, but simply doesn't have these children as a priority in her life.

On appeal, Neveraski contends that the family court clearly erred in terminating her parental rights because she was no longer homeless at the time of the termination hearing and she was "on the right track" with her life. She also claims this decision was against the children's best interests.

II. Terminating Neveraski's Parental Rights

A. Standard Of Review

Appellate courts review a family court's decision to terminate parental rights for clear error.⁵

B. Statutory Grounds

The family court must find clear and convincing evidence on the record proving that at least one statutory ground for termination exists before it terminates parental rights.⁶ In this case, the family court found clear and convincing evidence to terminate under three separate statutory provisions.

⁵ *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 5.974(I).

⁶ MCL 712A.19b(3); MSA 27.3178(598.19b)(3); see *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

We have some difficulty with the adequacy of the evidence to terminate Neveraski's parental rights under MCL 712A.19b(3)(c)(ii); MSA 27.3178(598.19b)(3)(c)(ii) because she and Wood had separated. MCL 712A.19b(3)(c); MSA 27.3178(598.19b)(3)(c) states:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

* * *

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

We are not sure how Neveraski's *separation* from Wood would be the sort of step that would cause the children to come within the family court's jurisdiction when Kilgore recommended just that action. Nor is it clear how, even if her relationship with Wood, not their separation, was the "condition" that caused the children "to come within the court's jurisdiction," Neveraski had failed to rectify that condition. Neveraski, Wood, and Pamela Tundevold all testified that they had ended the relationship. Viewed reasonably, separating was an appropriate move for Neveraski to make so that she could use more of her money for her children, not the sort of bad judgment that ordinarily underlies actions that would support terminating parental rights.

The family court was entitled to reject Neveraski's, Wood's, and Pamela Tundevold's testimony concerning the relationship as not being credible.⁷ However, critically, we question how the family court could find that this separation was a changed circumstance at all when it described at length on the record why it thought the separation was a "charade." In other words, the conclusion that this separation was a new or different circumstance in the case, regardless of its ultimate effect, directly conflicts with the family court's finding that it did "not believe that this couple is broken up here," an explicit determination that the situation had *not* changed. Actually, the FIA never explained what it considered to be changed circumstances sufficient to support termination under subsection (c)(ii) and we cannot determine what those changed circumstances might have been, much less that they were in accord with the family court's findings and conclusion on this statutory ground for termination.

Nevertheless, a family court needs clear and convincing evidence of only one statutory ground to terminate parental rights. Neveraski's recurrent homelessness, despite financial help and other assistance from the FIA, amply supported terminating her parental rights under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) for failure to provide proper care and custody for

⁷ See *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991) ("Consistent with this [clear error] standard, deference must be accorded to the probate court's assessment of the credibility of the witnesses before it.").

her children. Further, McFellin testified that she thought one more month would be a reasonable time in which to rectify the housing problem in light of the time these young children had been in foster care, but Neveraski would likely need at least six months to make a significant change. McFellin's testimony supported the family court's conclusion that Neveraski would not be able to provide proper care and custody for the children within a reasonable time considering their ages, as subsection (g) requires.

The recurrent homelessness, the primary reason the children were placed in foster care, also supported termination under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i). There is no question in the record that more than 182 days had passed from the first dispositional order. While Neveraski now contends that, having moved in with her stepmother and her stepmother's husband, she was no longer homeless, the core of her problem with homelessness was not being able to *maintain* housing. This was something she had not proven she could do even though she had acquired yet another new residence by the time of the termination hearing. As Neveraski contends in her brief on appeal, this may very well have been the first step in a fresh start for her, but at the time the family court was considering whether to terminate her parental rights it had no evidence that she would have steady housing for any amount of time in the future. This area of her life stood in stark contrast to her work history, which she was able to demonstrate was reliable in light of her length of time at her job, her earnings, and her benefits. McFellin's testimony also supported the family court's conclusion that this housing problem was not likely to be cured within a reasonable time considering the children's ages.

Further, though Neveraski emphasizes her good qualities, not one of the three statutory termination provisions the family court cited for its decision to terminate Neveraski's parental rights required the FIA to demonstrate that Neveraski had a poor personal relationship with her children or was abusive toward them. Nor did the FIA have to rebut the testimony that she introduced indicating that she was a loving, attentive mother who had appropriate parenting skills. The record leaves no doubt that Neveraski and her children loved each other and that Neveraski interacted with them appropriately. The problem, however, is that the children need a place in which to live and Neveraski has not been able to provide that for them. The Legislature has deemed this the sort of neglect that merits termination of parental rights even without evidence of personal fault. Thus, we conclude that the family court did not clearly err when it found sufficient evidence to terminate her parental rights under MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g).

C. Best Interests

Neveraski also contends that terminating her parental rights was not in the children's best interests because they knew her, they love her, and they would miss her. The crux of Neveraski's argument is that she simply needed more time to prove that she could provide for her children. She argues that continuing to stay in foster care would likely have some harmful effect on the children, but that the harm associated with taking them away from her forever by not waiting even a little more time would be far greater.

MCL 712A.19b(5); MSA 27.3178(598.19b)(5) states that a trial court "shall order termination of parental rights" if it finds clear and convincing evidence to terminate under one of the statutory grounds. In other words, termination is mandatory once the court finds evidence of

at least one statutory ground to terminate.⁸ Only if the trial court finds evidence on the record as a whole that termination is *not* in the child's best interests can it refuse to terminate parental rights.⁹ In this case, the family court clearly understood Neveraski's argument on the best interests factor, but simply disagreed on the basis of the evidence on the record. The family court affirmatively stated that termination was in the children's interest because it saw no end to the amount of time Neveraski would need to improve her situation. In light of her concession that she needed still more time, though she had had a year in which to change her circumstances, and in light of McFellin's testimony, we see no clear error in the family court's reasoning and conclusion on this factor.

Affirmed.

/s/ David H. Sawyer

/s/ Michael R. Smolenski

/s/ William C. Whitbeck

⁸ See *IEM*, *supra* at 450-451.

⁹ See *Trejo*, *supra* at 353-354.